

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HOPE BRENNAN,

Plaintiff,

v.

BNSF RAILWAY COMPANY.

Defendant.

ORDER

21-cv-365-wmc

The court held a final pretrial conference on Wednesday, October 19, 2022. Consistent with what was stated at the conference, the court rules as follows.

As to plaintiff's motion for sanctions (dkt. #111), defendant has until Friday, October 21, 2022, to follow up with the two, most likely workers to have authored the work reports for locomotive BSNF 7492 on February 7, 2019 (dkt. #1503) and, to the extent either has information about those two reports, to make them available for deposition in person or by video. Plaintiff should propose a limiting instruction based on defendant's failure to do so sooner as a sanction on or before Monday, October 24, 2022, to which defendant may response on or before Wednesday, October 26, 2022, at 10 a.m.

The parties also asked for clarification of the court's earlier ruling on plaintiff's motion in limine F, addressing Brennan's alleged failure to mitigate. Although defendant's expert opines as to jobs that plaintiff *would* be qualified for in the future if she obtained a bachelor's degree, and her potential increased earning power, the expert report does *not* include any information about the availability of those jobs in the La Crosse area. Without evidence that there would be applicable jobs available in plaintiff's geographic area, defendant's mitigation argument would be entirely speculative. Defendant may have until

Friday, October 21, to respond and provide further guidance to the court as to its proof on this question.

For defendant's motion in limine F, which seeks to limit mention of unrelated repairs, the court will allow plaintiff to introduce evidence of repairs to the extent that she has an expert who can testify to its relevance *and* did so in their expert report.

The parties should file their respective opposition to exhibits and deposition designations proffered by the other side on or before Friday, October 21. By Monday October 24, the parties must also file: (1) a copy of the transcripts of all deposition designations (preferably indicating on the transcript portions that has been objected to by the other side); and (2) a copy of any exhibits to which an objection has been made.

Finally, the court will hold a continuing final pretrial conference on Wednesday, October 26, 2022, at 12:30 p.m. by zoom videoconference.

Entered this 20th day of October, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge